

In the Matter of Merchant Mariner's Document No. Z-976864-D1 and
all other Licenses, Certificates and Documents
Issued to: EUSEBIO COLON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

948

EUSEBIO COLON

This appeal has been taken in accordance with Title 46 United States Code 239a-b (Public Law 500, 83rd Congress, 68 Stat. 484) and Title 46 Code of Federal Regulations Sec. 137.11-1.

An Examiner of the United States Coast Guard conducted a hearing at New York, New York, and, by order dated 22 October 1956, revoked the seaman documents of Appellant upon finding him guilty of the charge of "conviction of a narcotic law violation." The specification alleges in substance that, on or about 9 May 1955, Appellant was convicted for violation of the narcotic drug laws of the State of New York.

At the hearing, Appellant entered a plea of "guilty" to the charge and specification. The Investigating Officer made his opening statement. He then introduced in evidence certified copies of the record of Appellant's conviction as alleged in the specification.

Appellant made a statement under oath in which he implied that his conviction by the court was improper.

The Examiner concluded that the charge and specification had been proved by plea. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-976864-D1 and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 9 May 1955, Appellant was convicted by the County Court of the County of Kings, New York State, a court of record, for a violation of the narcotic drug laws of the state of New York.

Appellant appeared with counsel before the court. He entered

a plea of guilty to the crime of attempted violation of the State Public Health Law, as a felony, with respect to narcotic drugs (Article 33, section 3301). This plea was entered under the second count of an indictment which alleged that, on or about 14 January 1955, Appellant unlawfully had possession of heroin with the intent to barter, exchange, sell or give it to another person. Appellant was sentenced to be imprisoned in the New York City Penitentiary.

OPINION

In the appeal, it is requested that Appellant be granted clemency because of the hardship to his family. Appellant also requests a new hearing.

Both of Appellant's requests must be denied. Regardless of the resultant hardship, the order of revocation will be sustained. On a finding of guilty of a charge brought under 46 U.S.C. 239a-b, this is the only order which an Examiner may enter.

It would serve no purpose to grant Appellant's request for a new hearing in view of the conclusiveness of his conviction by the court. This conviction may not be collaterally attacked in these proceedings. The evidence indicates that Appellant was not deprived of any rights before the court. See Commandant's Appeal decision No. 932.

ORDER

The order of the Examiner dated at New York, New York, on 22 October 1956 is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 8th day of January, 1957.